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HOUSE BILL 821

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

William "Bill" R. Rehm

AN ACT

RELATING TO CRIMES; DEFINING POSSESSION OF A CONTROLLED
SUBSTANCE TO INCLUDE CONSUMPTION OF THE CONTROLLED SUBSTANCE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 30-31-23 NMSA 1978 (being Laws 1972,
Chapter 84, Section 23, as amended) is amended to read:

"30-31-23. CONTROLLED SUBSTANCES--POSSESSION
PROHIBITED.--

A. It is unlawful for any person intentionally to
possess a controlled substance unless the substance was
obtained pursuant to a valid prescription or order of a
practitioner while acting in the course of his professional
practice or except as otherwise authorized by the Controlled
Substances Act. It is unlawful for any person intentionally to
possess a controlled substance analog.

.160181.1

underscoring material = new
~~[bracketed material] = delete~~

underscored material = new
[bracketed material] = delete

1 B. A blood, urine or other medical test that
2 indicates a detectable amount of a controlled substance not
3 obtained through a valid prescription is present or has been
4 metabolized is prima facie evidence of possession in the county
5 where the test was obtained.

6 ~~[B.]~~ C. Any person who violates this section with
7 respect to:

8 (1) one ounce or less of marijuana is, for the
9 first offense, guilty of a petty misdemeanor and shall be
10 punished by a fine of not less than fifty dollars (\$50.00) or
11 more than one hundred dollars (\$100) and by imprisonment for
12 not more than fifteen days, and, for the second and subsequent
13 offenses, guilty of a misdemeanor and shall be punished by a
14 fine of not less than one hundred dollars (\$100) or more than
15 one thousand dollars (\$1,000) or by imprisonment for a definite
16 term less than one year, or both;

17 (2) more than one ounce and less than eight
18 ounces of marijuana is guilty of a misdemeanor and shall be
19 punished by a fine of not less than one hundred dollars (\$100)
20 or more than one thousand dollars (\$1,000) or by imprisonment
21 for a definite term less than one year, or both; or

22 (3) eight ounces or more of marijuana is
23 guilty of a fourth degree felony and shall be sentenced
24 pursuant to the provisions of Section 31-18-15 NMSA 1978.

25 ~~[C.]~~ D. Except for those substances listed in

.160181.1

underscoring material = new
[bracketed material] = delete

1 Subsection [~~D~~] E of this section, any person who violates this
2 section with respect to any amount of any controlled substance
3 enumerated in Schedule I, II, III or IV or a controlled
4 substance analog of a substance enumerated in Schedule I, II,
5 III or IV is guilty of a misdemeanor and shall be punished by a
6 fine of not less than five hundred dollars (\$500) or more than
7 one thousand dollars (\$1,000) or by imprisonment for a definite
8 term less than one year, or both.

9 [~~D-~~] E. Any person who violates this section with
10 respect to phencyclidine as enumerated in Schedule III or a
11 controlled substance analog of phencyclidine; methamphetamine,
12 its salts, isomers or salts of isomers as enumerated in
13 Schedule II or a controlled substance analog of
14 methamphetamine, its salts, isomers or salts of isomers;
15 flunitrazepam, its salts, isomers or salts of isomers as
16 enumerated in Schedule I or a controlled substance analog of
17 flunitrazepam, including naturally occurring metabolites, its
18 salts, isomers or salts of isomers; gamma hydroxybutyric acid
19 and any chemical compound that is metabolically converted to
20 gamma hydroxybutyric acid, its salts, isomers or salts of
21 isomers as enumerated in Schedule I or a controlled substance
22 analog of gamma hydroxybutyric acid, its salts, isomers or
23 salts of isomers; gamma butyrolactone and any chemical compound
24 that is metabolically converted to gamma hydroxybutyric acid,
25 its salts, isomers or salts of isomers as enumerated in

.160181.1

underscored material = new
[bracketed material] = delete

1 Schedule I or a controlled substance analog of gamma
2 butyrolactone, its salts, isomers or salts of isomers; 1-4
3 butane diol and any chemical compound that is metabolically
4 converted to gamma hydroxybutyric acid, its salts, isomers or
5 salts of isomers as enumerated in Schedule I or a controlled
6 substance analog of 1-4 butane diol, its salts, isomers or
7 salts of isomers; or a narcotic drug enumerated in Schedule I
8 or II or a controlled substance analog of a narcotic drug
9 enumerated in Schedule I or II is guilty of a fourth degree
10 felony and shall be sentenced pursuant to the provisions of
11 Section 31-18-15 NMSA 1978.

12 [E-] F. Any person who violates Subsection A of
13 this section while within a posted drug-free school zone,
14 excluding private property residentially zoned or used
15 primarily as a residence and excluding any person in or on a
16 motor vehicle in transit through the posted drug-free school
17 zone, with respect to:

18 (1) one ounce or less of marijuana is, for the
19 first offense, guilty of a misdemeanor and shall be punished by
20 a fine of not less than one hundred dollars (\$100) or more than
21 one thousand dollars (\$1,000) or by imprisonment for a definite
22 term less than one year, or both, and for the second or
23 subsequent offense, is guilty of a fourth degree felony and
24 shall be sentenced pursuant to the provisions of Section
25 31-18-15 NMSA 1978;

.160181.1

underscored material = new
[bracketed material] = delete

1 (2) more than one ounce and less than eight
2 ounces of marijuana is guilty of a fourth degree felony and
3 shall be sentenced pursuant to the provisions of Section
4 31-18-15 NMSA 1978;

5 (3) eight ounces or more of marijuana is
6 guilty of a third degree felony and shall be sentenced pursuant
7 to the provisions of Section 31-18-15 NMSA 1978;

8 (4) any amount of any other controlled
9 substance enumerated in Schedule I, II, III or IV or a
10 controlled substance analog of a substance enumerated in
11 Schedule I, II, III or IV, except phencyclidine as enumerated
12 in Schedule III, a narcotic drug enumerated in Schedule I or II
13 or a controlled substance analog of a narcotic drug enumerated
14 in Schedule I or II, is guilty of a fourth degree felony and
15 shall be sentenced pursuant to the provisions of Section
16 31-18-15 NMSA 1978; and

17 (5) phencyclidine as enumerated in Schedule
18 III, a narcotic drug enumerated in Schedule I or II, a
19 controlled substance analog of phencyclidine or a controlled
20 substance analog of a narcotic drug enumerated in Schedule I or
21 II is guilty of a third degree felony and shall be sentenced
22 pursuant to the provisions of Section 31-18-15 NMSA 1978."